

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

arm; pain and numbness down to her fingers; sore right ribs; pain in her shoulder, back, neck, hip, knee, and ankle joint; and limited mobility in her arm, shoulder, and neck when she slipped and fell on a sheet of ice while in the performance of duty. She stopped work on the date of injury and returned to work on November 4, 2019.

On October 31, 2019 appellant underwent diagnostic testing by Dr. John M. Gilbert, a Board-certified diagnostic radiologist. In a cervical spine x-ray report dated October 31, 2019, Dr. Gilbert provided an impression of normal cervical spine series with oblique and flexion and extension views. He reported that x-rays of the right shoulder and right scapula performed on October 31, 2019 were normal. Dr. Gilbert's diagnostic reports noted appellant's history of injury of falling on the ice and experiencing pain in her right upper extremity status post a fall on ice on October 31, 2019.

Dr. Doris A. Kleinert, a Board-certified family practitioner, in a November 7, 2019 physician's report of workers' compensation, noted a date of injury of October 31, 2019. She provided work-related diagnoses of neck, back, and right shoulder blade pain, right arm paresthesia without weakness. Dr. Kleinert advised that appellant could return to work with restrictions, for four hours per day as of November 8, 2019. In a November 8, 2019 narrative report, she discussed examination findings and reiterated her diagnosis of right shoulder and neck pain, and right upper limb paresthesia. Dr. Kleinert also provided assessments of unspecified fall and scapulalgia. On October 31, 2019 she referred appellant to physical therapy.

OWCP also received physical therapy notes dated from November 25, 2019 through January 20, 2020.

In a March 23, 2020 development letter, OWCP advised appellant of the deficiencies of her claim, requested additional factual and medical evidence, and provided a questionnaire for her completion. It afforded her 30 days to respond.

In an April 23, 2020 response to OWCP's development letter, appellant, through counsel, explained that she was unable to obtain and submit a report from her physician because his office was limited due to the COVID-19 pandemic, and she was unable to complete the development questionnaire as she was required to look into records that she could not access at home during the pandemic. Counsel requested a 45-day extension to submit the required information. No additional evidence was received.

OWCP, by decision dated April 23, 2020, accepted that the October 31, 2019 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted employment incident. OWCP explained that pain is a symptom, not a medical diagnosis. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

Appellant, through counsel, requested reconsideration. She submitted a partial copy of a report by Dr. Kleinert.

Subsequently, appellant submitted the completed development questionnaire and a witness statement from her coworker.

By letter dated January 25, 2021, OWCP informed appellant that only a part of Dr. Kleinert's report had been received. It afforded her 30 days to submit Dr. Kleinert's entire report.

OWCP received a complete copy of Dr. Kleinert's November 26, 2020 report, noting that appellant presented for examination on November 7, 2019 for ongoing complaints of pain in her neck, back, and right shoulder blade, and right arm numbness and tingling. Dr. Kleinert also noted her history of injury on October 30, 2019, reported findings on examination, and reviewed diagnostic results. She diagnosed sprain of ligaments of the cervical spine and right shoulder, cervicalgia, scapulalgia, and paresthesia of the right upper limb. Based on her review of appellant's history, physical examination findings, and imaging studies, Dr. Kleinert opined that the October 31, 2019 employment incident caused appellant's diagnosed conditions. Regarding appellant's cervical spine sprain and subsequent development of cervicalgia, she noted that a sprain of the ligaments of the cervical spine (cervical sprain) occurs when a muscle or ligament in the neck stretches or tears. This tearing and stretching can occur when a sudden movement, such as a fall, forces the neck to stretch or bend outside of its normal range of motion and places extreme pressure on the cervical spine. Extreme pressure on the cervical spine often results in chronic pain that is limited to the neck region, otherwise known as cervicalgia. Dr. Kleinert related that, in this case, appellant slipped on a sheet of ice and fell, landing primarily on her right shoulder blade. The abrupt fall caused a sudden, rapid back-and-forth movement of her neck (*i.e.*, whiplash) and put extreme, excessive pressure on her neck and shoulder. This sudden back-and-forth movement was so forceful that it caused appellant's neck to move outside of its normal range of motion and damaged the soft tissue in her neck. This resulted in a cervical sprain. As a result of this pressure on her cervical spine and subsequent soft tissue damage, as of November 7, 2019, appellant experienced pain that limited the neck region, *i.e.*, cervicalgia. Dr. Kleinert maintained that apart from the October 31, 2019 work-related incident there was nothing in her history and no activities outside work that caused or contributed to her cervical sprain or cervicalgia. Regarding appellant's right shoulder sprain, she indicated that a traumatic injury such as a fall causes a shoulder sprain when the tendons and ligaments stretch beyond their normal limits and become damaged or torn. The damage to the tendons and ligaments causes swelling, tenderness, and inflammation in the shoulder, resulting in a sprain. Dr. Kleinert again noted that the impact of her fall on her right shoulder caused the ligaments in her shoulder to be stretched beyond their normal limits. This damaged the tendons and ligaments and caused appellant's right shoulder sprain. Dr. Kleinert maintained that the mechanism of injury, falling to the hard ground, and her symptoms of pain and painful range of motion corroborated this diagnosis. She noted that scapulalgia is a term that refers to pain in the region of the scapula or shoulder blades. This pain can be traumatic injury, such as a fall. When a person falls and lands on the shoulder blades, the shoulders absorb the force of the impact. The impact damages the soft tissues in the shoulder blades and swelling, bruising, tenderness, and inflammation, otherwise known as scapulalgia. Dr. Kleinert maintained that when appellant slipped onto a patch of ice and fell onto her right shoulder the soft tissues in the region became damaged because the right shoulder blade absorbed the impact of her body falling to the ground. This damage resulted in pain, swelling, tenderness, and inflammation. This damage also caused appellant's scapulalgia. Dr. Kleinert defined appellant's right upper limb paresthesia as a burning, tingling sensation that occurs when pressure is applied to a nerve. The sensation is often likened to pins and needles. Dr. Kleinert noted that paresthesia can be caused by traumatic injuries such as falls because such injuries cause the soft tissues in the body to swell. When a tissue becomes inflamed and swollen, the tissue puts increased pressure on nearby nerves. The increased

pressure on the nerve results in paresthesia. Dr. Kleinert maintained that the impact of appellant falling onto her right shoulder and resulting sprain (described above) on her October 31, 2019 work injury caused swelling and inflammation in her right arm and shoulder. Consequently, the swollen tissue put increased pressure on the nerves in her right arm, causing paresthesia of the upper right limb. Dr. Kleinert related that appellant experiences numbness and tingling of the right arm/hand, which is consistent with this diagnosis. She concluded that appellant may return to part-time work with limitations as of November 7, 2019.

By decision dated March 15, 2021, OWCP modified in part its April 23, 2020 decision, but appellant's claim remained denied. It found that while Dr. Kleinert provided diagnoses of right shoulder sprain and neck sprain, her opinion on causal relationship was of diminished probative value as it was more than one year after appellant's October 31, 2019 employment incident, and thus, was not contemporaneous to the accepted work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>8</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

In a November 26, 2020 medical report, Dr. Kleinert opined that the accepted October 31, 2019 employment incident caused appellant's cervical spine sprain, cervicgia, right shoulder sprain, scapulalgia, and right upper limb paresthesia. She reviewed diagnostic reports and provided findings on physical examination. Dr. Kleinert discussed the mechanism of injury for this traumatic injury claim. She noted that a cervical spine sprain occurs when a muscle or ligament in the neck stretches or tears. This tearing and stretching can occur when a sudden movement, such as a fall, forces the neck to stretch or bend outside of its normal range of motion and places extreme pressure on the cervical spine. Dr. Kleinert maintained that the impact of appellant's fall onto her right shoulder caused the ligaments in her shoulder to be stretched beyond their normal limits. This damaged the tendons and ligaments and caused her right shoulder sprain. Dr. Kleinert related that appellant's mechanism of injury, falling to the hard ground, and her symptoms of pain and painful range of motion corroborated her diagnosis. She noted that scapulalgia referred to pain in the region of the scapula or shoulder blades. This pain can be traumatic injury, such as a fall. When a person falls and lands on the shoulder blades, the shoulders absorb the force of the impact. The impact damages the soft tissues in the shoulder blades and swelling, bruising, tenderness, and inflammation, otherwise known as scapulalgia. Dr. Kleinert indicated that since appellant's right shoulder blade absorbed the impact of her body falling to the ground, the soft tissues in the region became damaged. This damage resulted in pain, swelling, tenderness, inflammation, and scapulalgia. Dr. Kleinert defined right upper limb paresthesia as a burning, tingling sensation that occurs when pressure is applied to a nerve. The sensation is often likened to pins and needles. Paresthesia can be caused by traumatic injuries such as falls because such injuries cause the soft tissues in the body to swell. When a tissue becomes inflamed and swollen, the tissue puts increased pressure on nearby nerves. The increased pressure on the nerve results in paresthesia. Dr. Kleinert advised that the impact and resulting sprain of appellant's fall onto her right shoulder and arm caused swelling and inflammation in her right arm and shoulder. Consequently, she advised that the swollen tissue put increased pressure on the nerves in her right arm, causing paresthesia of the upper right limb. Dr. Kleinert maintained that appellant's numbness and tingling of the right arm/hand was consistent with such diagnosis.

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<sup>7</sup> S.S., Docket No. 19-0688 (issued January 24, 2020); A.M., Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> T.L., Docket No. 18-0778 (issued January 22, 2020); Y.S., Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The Board finds that her report provides sufficient rationale to require further development of the case record by OWCP.<sup>9</sup> Dr. Kleinert referenced objective medical findings demonstrating injury, expressed her opinion on causal relationship within a reasonable degree of medical certainty, and provided a pathophysiologic explanation as to the mechanism by which the accepted October 31, 2019 employment incident would have resulted in her diagnosed conditions.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup>

The case shall, therefore, be remanded to OWCP for further development of the medical evidence in order to determine whether appellant sustained a medical condition causally related to the October 31, 2019 employment incident. On remand, OWCP shall prepare a statement of accepted facts and refer appellant to specialist in the appropriate field of medicine for a second opinion examination. The referral physician shall provide a well-rationalized opinion as to whether the accepted employment incident caused, aggravated, or accelerated appellant's diagnosed conditions. If the referral physician opines that the diagnosed conditions are not causally related to the employment incident, he or she must provide a rationalized explanation as to why their opinion differs from that articulated by Dr. Kleinert. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's traumatic injury claim.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>9</sup> See *B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

<sup>10</sup> *Id.*; *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 15, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 12, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board